IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7758 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHWIN ALIAS GOPAL ALIAS KALU GANESHBHAI PATEL

Versus

COMMISSIONER OF POLICE FOR THE CITY OF SURAT

Appearance:

1. Special Civil Application No. 7758 of 2001

MS. BANNA DUTTA FOR MR MEHUL SHARAD SHAH for Petitioner

MR KT DAVE AGP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/11/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Surat City, Surat, vide order dated April 23, 2001, Annexure A to the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of section 2 (c) of the Act as two offences under the IPC have been registered against him which are pending at trial stage and statements of two witnesses are recorded and, therefore, according to the detaining authority the activities of the petitioner are prejudicial to the maintenance of public order and hence powers under Section 9 (2) of the Act are exercised by the detaining authority by not disclosing the identity of the witnesses and detained the petitioner - detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Dutta, learned advocate for the petitioner has restricted her arguments to the effect that there is a delay in passing the order of detention without recording satisfactory explanation on the part of the detaining authority and, therefore, order of detention is vitiated. According to her, the second and last offence against the petitioner was registered on December 22, 2000 whereas the order of detention came to be passed on April 23, 2001. Therefore, there is a delay of almost four months in passing the detention order and on account of the delay which is unexplained by the detaining authority, the detention order is vitiated and she urged that the petition may be allowed by quashing and setting the impugned order of detention aside and setting the petitioner at liberty forthwith. Besides this, the privilege claimed by the detaining authority under section 9 (2) of the Act is not genuine as no affidavit in reply is filed by the detaining authority. On this ground also she urged that the petition may be allowed.

5. Mr. K.T. Dave, learned AGP has appeared on behalf of the respondents and opposed the petition by making oral submissions. He, however, does not dispute the factual aspect with respect to the date on which the last offence was registered against the petitioner and passing of the detention order. He, therefore, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in

this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of the impugned order of detention, it is seen that there are two cases registered against the petitioner for commission of offences under IPC and the last offence came to be registered on December 22, 2000 whereas the impugned order came to be passed on April 23, 2001 and, therefore, there is a delay of four months in passing the detention order which is unexplained by the detaining authority.

8. In the case of Anand Prakash v. State of UP, AIR 1990 SC 516 - it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. A similar view is also expressed by this Court in the case of Elesh N. Patel v. Commissioner of Police, 1997 (1) GLH 381.

10. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgments to the facts of the present case, the last offence which was registered against the petitioner on December 22, 2000 could not be a proximate cause and, therefore, unexplained delay makes the ground of detention not proximate and vitiates the order of detention itself. Therefore, on the ground of delay alone, the order of detention deserves to be quashed and set aside and the petition deserves to be allowed.

11. So far as the privilege claimed under Section 9 (2) of the Act is concerned, it cannot be said to be genuine as no affidavit in reply is filed by the detaining authority.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)